

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Houston Division**

FIESTA MART, L.L.C.,

Plaintiff,

v.

ACON INVESTMENTS, LLC,

Defendant.

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Civil Action No. 4:18-cv-04704

Judge Ewing Werlein, Jr.

DECLARATION OF STACY WALKER

I, Stacy Walker, declare under penalty of perjury that the following is true and correct:

1. I currently serve as Controller of Fiesta Mart L.L.C. (“Fiesta”), the Plaintiff in this action. I am over 21 years of age and am competent to give testimony. The facts stated herein are based upon my personal knowledge, my review of company records, and my discussions with Fiesta’s agents and employees. I submit this declaration in support of Plaintiff’s Response to Defendant’s Motion to Dismiss for *Forum Non Conveniens* or Transfer Under 28 U.S.C. § 1404(a).

2. Fiesta is a Texas limited liability company.

3. Fiesta operates stores providing groceries and other goods and services in Texas. Fiesta was founded in 1972 in Houston, Texas, its corporate headquarters are in Houston, Texas, and the majority of its stores are located in the Houston metropolitan area.

4. On or about August 25, 2017, Hurricane Harvey made landfall in Houston and caused property damage and business interruption to various Fiesta stores (the “Harvey Loss”) including those at Mesa and Tidwell (Store #23; 9419 Mesa Drive); the Addicks Reservoir at Clay Road and

Texas 6 (Store # 56; 4330 Highway 6); and East Freeway (Store # 10; 12201 E. Freeway). Each of the affected stores is in or around Houston, Texas.

5. Fiesta has sought insurance recoveries in respect of the Harvey Loss from the following insurance policies (the "Primary Policies"):

Insurer	Policy No.
Allied World Assurance Company	0310-7409-1A
Arch Specialty Insurance Company	ESP7303053-01
Aspen Specialty Insurance Company	PRAGK1017
Certain Underwriters at Lloyd's of London (Hiscox)	URS 2552391.17
HDI Global Insurance Company	CPD1488300
Indian Harbor Insurance Company	PRO0047629
Westport Insurance Corporation	NAP 2001214 01

7. Fiesta maintains copies of the Primary Policies in Houston, Texas.

8. Fiesta's First Partial Proofs of Loss for insurance recovery under the Primary Policies in respect of the Harvey Loss are maintained in Houston, Texas.

9. Copies of the checks and other forms of payment received by Fiesta from insurers on the Primary Policies in response to the First Partial Proofs of Loss are maintained in Houston, Texas as are the associated premium records.

10. Certificates of insurance identifying "Fiesta Mart, L.L.C." as the Insured are maintained in Houston, Texas.

11. Fiesta suffered property damage from the Harvey Loss. Records concerning the property damage to the affected Fiesta stores and inventory therein, the repair and replacement thereof, invoices for such repair and replacement, and Fiesta's payment of those invoices, are all maintained in Houston, Texas.

12. Fiesta suffered business interruption from the Harvey Loss. Representatives of the insurers for the Primary Policies have asked for the following records from Fiesta respecting such business interruption:

- (a) detailed monthly departmental profit and loss statements;
- (b) monthly department sales reports;
- (c) weekly departmental sales reports;
- (d) Federal income tax return and supporting schedules or audited financial statements;
- (e) Weekly/bi-weekly payroll reports;
- (f) signed copies of leases or licensing agreements at affected Fiesta stores;
- (g) correspondence between suppliers and Fiesta detailing shortage of stock and inability to delivery stock; and
- (h) purchase order information and purchase invoices from suppliers detailing any backordered stock.

13. To the extent they exist, the records identified in paragraph 12, above, are maintained in Houston, Texas.

14. I oversee financial records respecting the Harvey Loss. I am unaware of Fiesta having received any business interruption payments from insurers on the Primary Policies for the Harvey Loss. I work and reside in the Houston metropolitan area.

15. Mr. David Olson of Fiesta oversees store repair and restoration efforts respecting the Harvey Loss. Mr. Olson works and resides in the Houston metropolitan area.

16. On information and belief, Mr. Wayne S. Peterson, Fiesta's former Vice President and Chief Financial Officer, who signed the First Partial Proofs of Loss, lives in the Dallas-Ft. Worth metropolitan area.

17. Mr. Joseph Angulo submitted an October 4, 2018 letter on behalf of Fiesta to Defendant ACON Investments, LLC. A true and correct copy thereof is attached as Exhibit A. Mr. Angulo resides in California.

18. On information and belief, Ms. Nancy Collins and Messrs. Jeffrey Roberts and Blaine Conant, each of whom is affiliated with the broker for the Primary Policies Willis of Illinois, Inc. or a company related thereto, do not reside in the state of Delaware.

Dated: Houston, Texas
January 23, 2019


Stacy Walker

EXHIBIT A



October 4, 2018

VIA EMAIL AND FEDEX

Kenneth Brotman
Founder, Managing Partner
ACON Investments, LLC
1133 Connecticut Ave, N.W., Suite 700
Washington, D.C. 20036

Re: Fiesta Mart, LLC -- Property Damage Insurance Proceeds
Loss: Property - Flood/Hurricane Harvey (CAT #1743)
Location: Various Fiesta Mart stores – Houston, TX

Dear Mr. Brotman:

We understand that ACON Investments, LLC recently received a payment from insurers of Fiesta Mart for \$4,780,347 for property damage to various Fiesta Mart stores from Hurricane Harvey. That payment belongs to Fiesta Mart, which ACON sold to Bodega Latina Corporation in April of this year.

Accordingly, please wire \$4,780,347 to Fiesta Mart, LLC within five business days. Wire instructions are below.

Wells Fargo Bank, N.A.
420 Montgomery Street
San Francisco, CA 94104
Account title: Bodega Latina Corporation
Routing Number: **Redacted**
Account Number: **Redacted**

Thank you, and please contact me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joe Angulo".
Joe Angulo
General Counsel

cc: Carlos Smith (carlos.smith@elsuper.org)
J. Mark Metts (jmetts@sidley.com)
Katy Lukaszewski (klukaszewski@sidley.com)
Adam Brown (adam.brown@hoganlovells.com)